

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

MARY JONES and JOSEPH ALFORD, )  
  )  
Plaintiffs,                         )  
  )  
v.                                     ) CIVIL ACTION NO.: 1:06-cv-585-WHA  
  )  
HOUSTON COUNTY SHERIFF'S         )  
DEPARTMENT, et al.,                 )  
  )  
Defendants.                         )

**MOTION TO DISMISS OR IN THE ALTERNATIVE**  
**FOR SUMMARY JUDGMENT**

COMES NOW, Michael Capshaw, in the above-styled cause, pursuant to Rule 12 of the Federal Rules of Civil Procedure and moves this Honorable Court to dismiss this action for failure to state a claim upon which relief can be granted. In the alternative, said Defendant moves this Honorable Court for an Order under Rule 56, of the Federal Rules of Civil Procedure, dismissing Plaintiff's claims against Michael Capshaw and as grounds therefor shows the Court that there is no genuine issue of material fact and that said Defendant is entitled to judgment as a matter of law. In support hereof said Defendant submits the following:

1. Plaintiff's complaint, as filed in this case.
2. The Affidavit of Michael Capshaw as attached to this Motion as Exhibit 1 which is incorporated herein by reference as if fully set forth.

WHEREFORE, Defendant Michael Capshaw respectfully moves this Honorable Court for an order under either Rule 12 or Rule 56 of the Federal Rules of Civil Procedure, dismissing Plaintiff's claims against said Defendant.

Respectfully submitted this the 3<sup>RD</sup> of August, 2006.

s/Gary C. Sherrer  
Gary C. Sherrer  
Bar Number: SHE016  
Attorney for Defendant  
Michael Capshaw

OF COUNSEL

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**CERTIFICATE OF SERVICE**

I, Gary C. Sherrer, hereby certify that on this 3<sup>RD</sup> day of August, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Richard H. Ramsey, IV, Esq.  
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s/Gary C. Sherrer  
OF COUNSEL